

MICHAEL A. CARDIZOZO
Corporation Counsel
Attorneys for Defendant
The City of New York
100 Church Street
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ESTHER EHRENFELD and ASHER EHRENFELD,

Plaintiffs,

**DEFENDANT THE CITY OF
NEW YORK'S LOCAL
CIVIL RULE 56.1
STATEMENT**

THE UNITED STATES OF AMERICA and THE CITY
OF NEW YORK,

07 Civ. 8559 (PKL)

Defendants. City File #: 2007-032064

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Defendant the City of New York (the "City") hereby respectfully submits its Statement Pursuant to Local Civil Rule 56.1 in support of its Motion for Summary Judgment.

Defendant's Statement of Uncontested Facts

1. Plaintiff, Esther Ehrenfeld, claims that on November 20, 2006, at approximately 11:10 a.m., she slipped and fell on a sidewalk in front of the United States Department of Veterans Affairs, New York Harbor Healthcare Systems VA Medical Center (the "VA Hospital"), located on the east side of 1st Avenue between 24th and 25th Streets. See plaintiff's Notice of Claim, ¶ 3, annexed as Exhibit A and plaintiff's Complaint, ¶ 17, annexed as Exhibit B.

2. Plaintiff alleges that she was caused to trip and fall over a raised and uneven sidewalk. See plaintiff's deposition transcript (31:6-11), annexed as Exhibit C.

3. The VA Hospital located on the east side of 1st Avenue between 24th and 25th Streets is owned by defendant the United States of America. See Answer of defendant United States of America, ¶26, annexed as Exhibit D.

4. Defendant City did not create the condition or cause any repairs to be made at the site of plaintiff's alleged fall. See Answer of defendant The City of New York, ¶18, annexed as Exhibit E.

Dated: New York, New York
May 9, 2008

Respectfully submitted.

MICHAEL A. CARDOZO
Corporation Counsel
Attorney for Defendant
The City of New York
100 Church Street
New York, New York 10007

By:

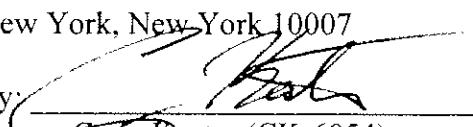

Craig Koster (CK-6054)
Assistant Corporation Counsel
(212) 788-7295

EXHIBIT A

15797

In the Matter of the Claim of
ESTHER EHRENFIELD

-against-

THE CITY OF NEW YORK

TO: CITY OF NEW YORK
100 CHURCH STREET
NEW YORK, NEW YORK 10007

SIR(S):

PLEASE TAKE NOTICE that the claimant herein hereby make(s) claim and demand against the CITY OF NEW YORK as follows:

1. The name and post-office address of each claimant and his attorney is:

ESTHER EHRENFIELD residing at 1737 54TH Street, Brooklyn, NY 11204.SUBIN ASSOCIATES LLP, Attorneys for Claimant, Address: 291 Broadway, 9TH Floor, New York, NY, 10007

2. The nature of the claim:

Action to recover damages for personal injuries, medical expenses, hospital expenses, loss of earnings, etc.

3. The time, place where and the manner in which the claim arose:

On November 20, 2006 at approximately at 11:10 am on the sidewalk located in front of the premises known as the New York Campus of the Dept of Veterans Affairs of New York Harbor Healthcare Systems (VA), located on the East side of First Avenue between East 24th and East 25th Street, New York, NY. The claimant, ESTHER EHRENFIELD was caused to fall and be seriously injured by reason of the negligence and lack of care of THE CITY OF NEW YORK their agents, servants and/or employees suffering, causing and/or permitting and/or allowing portions of said sidewalk at said location to be become, and remain in a dangerous, defective, raised, chipped, hazardous, unleveled, irregular, uneven, hazardous, unsafe, broken, cracked, improperly designed, constructed and/or repaired, irregular condition and in a state of disrepair, making said sidewalk dangerous and unsuitable for the use by persons; the defect consisted of raised pavement on the sidewalk approximately 10 feet long as depicted in the annexed diagram and photographs. Defendants were negligent in allowing and/or permitting said location to constitute a nuisance, a trap, and a trip hazard, and permitting same to be and remain in such a dangerous and defective condition for a long period and/or unreasonable period of time all of which THE CITY OF NEW YORK, their agents, and employees had due and prior notice of; in failing to apprise and/or warn the persons and in particular the plaintiff of the aforementioned conditions; in failing to place signs, barricades, warning and/or other devices to apprise persons of the dangerous, unsafe conditions so as to cause the incident herein complained of; in creating and maintaining a hazard, menace, nuisance and trap thereat and into failing to comply with the rules, regulations, laws, statutes and ordinances made and provided therefore.

4. The items of damage or injuries claimed are:

Multiple injuries to head, neck, back, hands, shoulders, body, limbs, knees, legs and ankles, including a Left elbow fracture, etc., etc..

Medical expenses, hospital expenses, physician services, etc.

RECEIVED
CITY OF NEW YORK
CLERK'S OFFICE
2007 JAN 26 P 2:01

NOTICE OF CLAIM

CITY OF N.Y. LAW DEPART.
OFFICE OF CORP. COUNSEL
CIVIL DIVISION
JAN 25 P.M. 1 292007 JAN 26 P 2:01
RECEIVED
CITY OF NEW YORK
CLERK'S OFFICERECEIVED
CITY OF NEW YORK
CLERK'S OFFICE
2007 JAN 26 P 2:01

This said claim and demand is hereby presented for adjustment and payment.

PLEASE TAKE FURTHER NOTICE, that by reason of the premises in default of

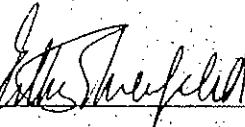
The City of New York to pay to the claimants the sum of an amount that exceeds the jurisdiction of the lower Court which would otherwise have jurisdiction within the time limited for compliance with the demand by the said

City of New York by the statutes in such cases made and provided, claimant intends to commence an action against The City of New York to recover said sum of an amount which exceeds the jurisdiction of the lower Court which would otherwise have jurisdiction with interest and costs.

DATED: New York, New York

December 22, 2006

Respectfully yours,


X Esther Ehrenfeld Claimant

Subin Associates, LLP
ATTORNEY FOR CLAIMANTS

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
COUNTY OF New York) ss:

Esther Ehrenfeld —, being duly sworn, deposes and says:

That I AM —, the claimant herein; that he/she read the foregoing Notice of Claim against the City of New York and knows the contents thereof; that the same is true to his/her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he/she believes it to be true.


X Esther Ehrenfeld

Sworn to before me this
22nd Day of December, 2006


Theresa Caruso

THERESA CARUSO
Notary Public, State of New York
No. 01CA6010794
Qualified in Richmond County
Commission Expires July 27, 2010

EXHIBIT B

JUDGE LEISURE

AO 440 Summons in a Civil Action

2007PI006823
2007-032069

United States District Court

SOUTHERN DISTRICT OF NEW YORK

SUMMONS IN A CIVIL CASE

CASE NUMBER:

McMahon

ESTHER EHRENFELD and ASHER EHRENFELD'

Plaintiff (s),

-against-

THE UNITED STATES OF AMERICA and THE CITY OF NEW YORK

Defendant (s),

X

TO: (Name and address of defendant)

UNITED STATES OF AMERICA

THE CITY OF NEW YORK
100 CHURCH STREET
NEW YORK, NEW YORK 10007

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

**SUBIN ASSOCIATES, LLP
291 BROADWAY- 9TH FLOOR
NEW YORK, NEW YORK 10007
(212) 285-3800**

an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

JCT 03 2008

J. MICHAEL McMAHON

CLERK

DATE

J. Michael McMahon

(BY) DEPUTY CLERK

11/20/06

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

DATE

NAME OF SERVER (PRINT) TITLE

TITLE

Check one box below to indicate appropriate method of service Served personally upon the defendant. Place where served: _____ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

 Returned unexecuted: _____ Other (specify): _____**STATEMENT OF SERVICE FEES**

| TRAVEL | SERVICES | TOTAL |
|--------|----------|-------|
| | | |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____

*Date**Signature of Server**Address of Server*

(1) As to who may serve a summons See Rule 4 of the Federal Rules of Civil Procedure

JUDGE LEISURE
MAY 15 2008UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**07 CIV 8559**

X

ESTHER EHRENFELD and ASHER EHRENFELD,

TRIAL BY JURY DEMANDED
VERIFIED COMPLAINT

Plaintiff (s),

Index No.:

-against-

THE UNITED STATES OF AMERICA and THE CITY OF
NEW YORK,

Defendant (s),

X

Plaintiffs, complaining of the defendants, by their attorney, upon information and belief,
respectfully allege:AS AND FOR A FIRST CAUSE OF ACTION IN BEHALF
OF PLAINTIFF ESTHER EHRENFELD AGAINST THE CITY OF NEW YORK

1. That at all the times herein mentioned, the plaintiffs ESTHER EHRENFELD and ASHER EHRENFELD were and still are domiciliaries of the State of New York residing at 1737 54th STREET, Brooklyn, New York. (Kings County).

2. That the amount in controversy in this action exceeds ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS, exclusive of interest and costs.

3. That at all the times herein mentioned, the defendant THE CITY OF NEW YORK, hereinafter referred to as "CITY", was and now is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

4. That notice of plaintiffs' claim and notice of intention to sue and of the time when and the place where the injuries alleged herein were incurred and sustained was duly filed by the plaintiffs with the Corporation Counsel of the defendant CITY and with the Comptroller of the defendant CITY within 90 days after the cause of action herein accrued.

5. That pursuant to notice given by the defendant CITY a hearing was waived.

6. That prior to the commencement of this action all of the requirements and conditions precedent established in Section 394 (a)-1.0, Volume 2A, Chapter 16 of the

Administration Code of the City of New York have been met or are not required.

7. That more than 15 days prior to the subject accident, defendant CITY received prior written notice of the defective conditions.

8. That more than 30 days have elapsed since the demand for claim upon which this action was founded was presented to the Comptroller of the defendant CITY for adjustment and that he has neglected and refused to make adjustment or payment thereof for said period of 30 days after such presentation, and that this action is commenced within one year after the cause of action accrued.

9. That at all the times herein mentioned, and more particularly 11/20/2006, First Avenue between East 24th and East 25th Street, New York, NY was and still is a public roadway in the Borough of New York, County of New York, City and State of New York which consisted of a roadway and sidewalks thereat.

10. That said sidewalks were public thoroughfares along and over which the public at large had a right to walk.

11. That at all the times herein mentioned, the defendant CITY was the owner of the aforementioned roadway and sidewalks.

12. That at all the times herein mentioned, the defendant CITY, its agents, servants and/or employees operated the aforementioned roadway and sidewalks.

13. That at all the times herein mentioned, the defendant CITY, its agents, servants and/or employees maintained the aforementioned roadway and sidewalks.

14. That at all the times herein mentioned, the defendant CITY, its agents, servants and/or employees managed the aforementioned roadway and sidewalks.

15. That at all the times herein mentioned, the defendant CITY, its agents, servants and/or employees controlled the aforementioned roadway and sidewalks.

16. That at all the times herein mentioned, it was the duty of the defendant(s), its agents, servants and/or employees to keep and maintain said roadway and sidewalks in a reasonable state of repair and good and safe condition, and not to suffer and permit said premises to become unsafe and dangerous to pedestrians and/or customers.

17. That on or about 11/20/2006, while plaintiff was lawfully walking on the

aforementioned sidewalk plaintiff Esther Ehrenfeld was precipitated and caused to fall and sustain multiple injuries by reason of the negligence, carelessness and want of proper care of the defendant(s), its agents, servants and/or employees.

18. That the said incident and resulting injuries to the plaintiff were caused through no fault of her own but were solely and wholly caused by reason of the negligence of the defendants, their agents, servants and/or employees in that the defendants suffered, caused and/or permitted and/or allowed portions of said sidewalk to be become, and remain in a dangerous, defective, raised, hazardous, unleveled, irregular, uneven, unsafe, broken, improperly designed, constructed and/or repaired condition and in a state of disrepair, making said sidewalk dangerous and unsuitable for the use by persons. Defendants were negligent in allowing and/or permitting said location to constitute a nuisance, a trap, and a trip hazard, and permitting same to be and remain in such a dangerous and defective condition for a long period and/or unreasonable period of time all of which THE CITY OF NEW YORK, their agents, and employees had due and prior notice of; in failing to apprise and/or warn the persons and in particular the plaintiff of the aforementioned conditions; in failing to place signs, barricades, warning and/or other devices to apprise persons of the dangerous, unsafe conditions so as to cause the incident herein complained of; in creating and maintaining a hazard, menace, nuisance and trap thereat and into failing to comply with the rules, regulations, laws, statutes and ordinances made and provided therefore.

19. That this action falls within one or more of the exceptions set forth in CPLR 1602.

20. Both actual and constructive notice are claimed. Actual notice in that the defendants, their agents, servants and/or employees had actual knowledge and/or created the complained of condition; constructive notice in that the condition existed for a long and unreasonable period of time.

21. That by reason of the foregoing, plaintiff was caused to sustain serious, harmful and permanent injuries, has been and will be caused great bodily injuries and pain, shock, mental anguish; loss of normal pursuits and pleasures of life; has been and is informed and verily

believes maybe permanently injured; has and will be prevented from attending to usual duties; has incurred and will incur great expense for medical care and attention; in all to plaintiff's damage in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction and which warrants the jurisdiction of this Court.

AS AND FOR A SECOND CAUSE OF ACTION IN BEHALF
OF PLAINTIFF ASHER EHRENFELD AGAINST DEFENDANT
THE UNITED STATES OF AMERICA

22. This plaintiff repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs with the same force and effect as though the same were more wholly and fully set forth at length herein.

23. Plaintiff ESTHER EHRENFELD was injured in a sidewalk accident on 11/20/2006, as set forth above.

24. At the time of the accident, the plaintiff ESTHER EHRENFELD was lawfully on the sidewalk which abutted premises owned by the defendant UNITED STATES operated by the Department of Veterans Affairs.

25. As result of said accident, plaintiff ESTHER EHRENFELD was injured and received medical treatment and incurred medical expenses.

26. That at all the times herein mentioned, the defendant UNITED STATES was the owner of the aforementioned property abutting the sidewalk where the accident occurred.

27. That at all the times herein mentioned, the defendant UNITED STATES, its agents, servants and/or employees operated the aforementioned property.

28. That at all the times herein mentioned, the defendant UNITED STATES, its agents, servants and/or employees maintained the aforementioned roadway and sidewalks property.

29. That at all the times herein mentioned, the defendant UNITED STATES, its agents, servants and/or employees managed the aforementioned property.

30. That at all the times herein mentioned, the defendant UNITED STATES, its agents, servants and/or employees controlled the aforementioned property.

31. That at all the times herein mentioned, it was the duty of the defendant(s), its

agents, servants and/or employees to keep and maintain said roadway in a reasonable state of repair and good and safe condition, and not to suffer and permit said premises to become unsafe and dangerous to pedestrians and/or customers.

32. That on or about 11/20/2006, while plaintiff was lawfully walking on the aforementioned sidewalk plaintiff Esther Ehrenfeld was precipitated and caused to fall and sustain multiple injuries by reason of the negligence, carelessness and want of proper care of the defendant(s), its agents, servants and/or employees.

33. That the said incident and resulting injuries to the plaintiff were caused through no fault of her own but were solely and wholly caused by reason of the negligence of the defendants, their agents, servants and/or employees in that the defendants suffered, caused and/or permitted and/or allowed portions of said sidewalk to be become, and remain in a dangerous, defective, raised, hazardous, unleveled, irregular, uneven, unsafe, broken, improperly designed, constructed and/or repaired condition and in a state of disrepair, making said sidewalk dangerous and unsuitable for the use by persons. Defendants were negligent in allowing and/or permitting said location to constitute a nuisance, a trap, and a trip hazard, and permitting same to be and remain in such a dangerous and defective condition for a long period and/or unreasonable period of time all of which THE UNITED STATES OF AMERICA, their agents, servants and employees had due and prior notice of; in failing to apprise and/or warn the persons and in particular the plaintiff of the aforementioned conditions; in failing to place signs, barricades, warning and/or other devices to apprise persons of the dangerous, unsafe conditions so as to cause the incident herein complained of; in creating and maintaining a hazard, menace, nuisance and trap thereat and into failing to comply with the rules, regulations, laws, statutes and ordinances made and provided therefore.

34 That this action falls within one or more of the exceptions set forth in CPLR 1602.

35 Both actual and constructive notice are claimed. Actual notice in that the

defendants, their agents, servants and/or employees had actual knowledge and/or created the complained of condition; constructive notice in that the condition existed for a long and unreasonable period of time.

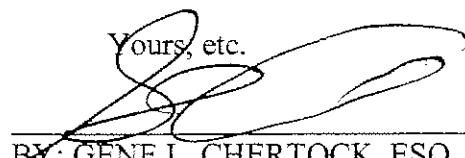
36. That by reason of the foregoing, plaintiff was caused to sustain serious, harmful and permanent injuries, has been and will be caused great bodily injuries and pain, shock, mental anguish; loss of normal pursuits and pleasures of life; has been and is informed and verily believes maybe permanently injured; has and will be prevented from attending to usual duties; has incurred and will incur great expense for medical care and attention; in all to plaintiff's damage in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction and which warrants the jurisdiction of this Court.

AS AND FOR A THIRD CAUSE OF ACTION IN BEHALF
OF PLAINTIFF ASHER EHRENFELD

37. Plaintiff repeats and realleges each and every allegation of the preceding cause of action as if fully set forth herein at length.

38. That the plaintiff Esther Ehrenfeld is the wife of this plaintiff, resides with him and to whose services, aid, society, support and consortium he is entitled. As a result of the aforesaid, this plaintiff sustained damages for the loss of services, aid, society, support and consortium of his said wife in all to his damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction and which warrants the jurisdiction of this Court.

WHEREFORE, plaintiff demands judgment against the defendants in the FIRST cause of action in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction and which warrants the jurisdiction of this Court; plaintiff demands judgment against the defendants in the SECOND cause of action in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction and which warrants the jurisdiction of this Court; plaintiff demands judgment against the defendants in the THIRD cause of action in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction and which warrants the jurisdiction of this Court; together with the costs and disbursements of this action.



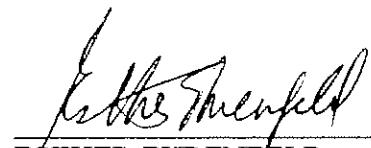
Yours, etc.

BY: GENE L. CHERTOCK, ESQ. (GLC7053)
SUBIN ASSOCIATES, LLP
Attorneys for Plaintiffs
291 Broadway
New York, New York 10007

STATE OF NEW YORK,
COUNTY OF NEW YORK)

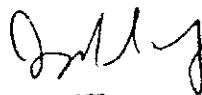
ESTHER EHRENFELD being duly sworn, deposes and says that I am the plaintiff in the within action, that I have read the foregoing SUMMONS AND COMPLAINT and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to the alleged on information and belief, and that as to those matters, I believe them to be true.

This SUMMONS AND COMPLAINT and the papers on which it is based, are certified pursuant to Section 130-1.1-a of the rules of the Chief Administrator (22NYCRR).



ESTHER EHRENFELD

Sworn to before me this
11 day of Sept., 2007



JOSEPH SCHWARTZ
NOTARY PUBLIC, State of New York
No. 01SC6068450
Qualified in Kings County 09
Commission Expires Dec. 31, 2009

Index No.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ESTHER EHRENFELD and ASHER EHRENFELD

Plaintiff (s),

-against-

THE UNITED STATES OF AMERICA and THE CITY OF NEW YORK

Defendant (s),

SUMMONS AND COMPLAINT

SUBIN ASSOCIATES, L.L.P.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone

291 Broadway, 9th Floor

New York, NY 10007

Telephone (212) 285-3800

Fax 571-0082 (For Court Use Only)

WE DO NOT ACCEPT SERVICE BY ELECTRONIC TRANSMISSION

To:

Attorney(s) for

Service of a copy of the within is hereby admitted

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

That the within is a (certified) true copy of an ORDER entered in the office **NOTICE OF** the clerk of the within named court on , 20____.

ENTRY

That an Order of which the within is a true copy will be presented for **NOTICE OF** settle to the Hon. one of the judges of the within

SETTLEMENT named court,

at
on , 20____, at 10:00 a.m.

Dated:

Attorney(s) for Defendant(s)

SUBIN ASSOCIATES, L.L.P.

Attorneys for plaintiff(s)

291 Broadway, 9th Floor

New York, NY 10007

(212) 285-3800

EXHIBIT C

Page 1

1
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

-----x

4 ESTHER EHRENFELD and ASHER
EHRENFELD,

5 Plaintiffs,

6
7 -against-

8 THE UNITED STATES OF AMERICA
and THE CITY OF NEW YORK,

Civil Docket # 07
Civ 8559

9 Defendants.

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14 DEPOSITION of a Plaintiff, ESTHER EHRENFELD,
15 taken by Defendants at the offices of The United States
16 Attorney, 86 Chambers Street, New York, New York 10007,
17 on Wednesday, April 16, 2008, commencing at 10:44 a.m.,
18 before Elizabeth Santamaria, a Certified Shorthand
19 (Stenotype) Reporter and Notary Public within and for
20 the State of New York.

1

2 APPAREANCES:

3

4 SUBIN ASSOCIATES, LLP
5 Attorneys for Plaintiffs
6 291 Broadway
7 New York, New York 10007

8

9 BY: DAVID KLEINMAN, Esq., of Counsel

10

11

12 MICHAEL CARDOZO
13 Attorneys for Defendant
14 City of New York
15 100 Church Street
16 New York, New York 10007

17

18 BY: CRAIG KOSTER, Esq., of Counsel

19

20

21 UNITED STATES ATTORNEY
22 Attorneys for Defendant
23 The United States of America
24 86 Chambers Street
25 New York, New York 10007

26

27 BY: CAROLINA FORNOS, Esq., of Counsel

28

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5 IT IS HEREBY STIPULATED AND AGREED
6 by and between the attorneys for the
7 respective parties herein that filing and
8 sealing be and the same are hereby waived.

9

10 IT IS FURTHER STIPULATED AND AGREED
11 that all objections, except as to the form
12 of the question, shall be reserved to the
time of the trial.

13

14 IT IS FURTHER STIPULATED AND AGREED
15 that the within deposition may be sworn to
16 and signed before any officer authorized to
17 administer an oath, with the same force and
18 effect as if signed and sworn to before the
Court.

19

--oo--

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1
2 E S T H E R E H R E N F E L D, called as a
3 witness, having duly affirmed before
4 Elizabeth Santamaria, a Notary Public
5 within and for the State of New York, was
6 examined and testified as follows:

7 EXAMINATION

8 BY MS. FORNOS:

9 Q. Please state your name and address
10 for the record.

11 A. Esther Ehrenfeld, 1737 54th Street,
12 Brooklyn, New York 11204.

13 Q. My name is Carolina Fornos. I am an
14 Assistant U.S. Attorney. I represent the
15 defendant, the United States of America. I am
16 going to be asking you some questions today that
17 relate to the case that you have filed. In
18 addition, Craig Koster, the counsel for the City,
19 may have some questions after I am done. So let
20 me start with asking you whether you have ever
21 been deposed before.

22 A. No.

23 Q. Let me go through some general
24 ground rules.

25 I am going to ask you some questions

E. Ehrenfeld

Q. You got off at 25th Street and you were walking south and at some point you fell; is that correct?

A. Yes.

Q. Can you describe to me how you fell and what happened?

8 A. I was actually walking with my
9 daughter having a very lively chat, and I tripped
10 on a sidewalk that was uneven and I actually
11 dived, put my hands out in front of me.

Q. Which hand?

A. Both, both.

14 And I hurt my head -- like I sort of
15 really dove, I like took a -- in the air, like
16 from the air down.

17 Q. When you were walking south down
18 First Avenue, are you clear that you were walking
19 south from First Avenue?

MR. KLEINMAN: She was

clear --

A. 25th to 24th.

23 Q. So you definitely got off at
24 25th Street?

A. Right.

1

2 C E R T I F I C A T E

3 STATE OF NEW YORK)
4 COUNTY OF RICHMOND)

5

6 I, ELIZABETH SANTAMARIA, a
7 Registered Professional Reporter and Notary
8 Public of the State of New York, do hereby
9 certify that the foregoing Deposition is,
10 of the witness, ESTHER EHRENFIELD, taken at
11 the time and place aforesaid, is a true and
12 correct transcription of my shorthand
13 notes.14 I further certify that I am not
15 neither counsel for nor related to any
16 party to said action, nor in any way
17 interested in the result or outcome
18 thereof.19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 25th day of April, 200821 
2223 ELIZABETH SANTAMARIA
24
25

EXHIBIT D

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
By: CAROLINA A. FORNOS
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. No.: (212) 637-2740
Fax No.: (212) 637-2702

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ESTHER ENRENFELD and ASHER
EHRENFELD,

Plaintiff(s),

v.

THE UNITED STATES OF AMERICA and
THE CITY OF NEW YORK

Defendant(s).

ECF

No. 07 Civ. 8559 (PKL)

ANSWER

Defendant United States of America ("United States"), by its attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, answers the Complaint of Plaintiffs Esther Ehnrenfeld and Asher Enrenfeld ("Plaintiffs"), upon information and belief, as follows:

**AS AND FOR A FIRST CAUSE OF ACTION IN BEHALF OF PLAINTIFF
ESTHER EHRENFELD AGAINST THE CITY OF NEW YORK**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of

allegations contained in Paragraph 3 of the Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint call for a legal conclusion to which no response is required. If a response is required, the United States denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

9. Admits the allegations contained in Paragraph 9 of the Complaint.

10. Admits the allegations contained in Paragraph 10 of the Complaint.

11. Admits the allegations contained in Paragraph 11 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.

16. The allegations contained in Paragraph 16 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, the United States denies the allegations contained in Paragraph 16 of the Complaint.

17. Denies the allegations contained in Paragraph 17 of the Complaint.

18. Denies the allegations contained in Paragraph 18 of the Complaint.

19. The allegations contained in Paragraph 19 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, the United States denies the allegations contained in Paragraph 19 of the Complaint.

20. The allegations contained in Paragraph 20 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, the United States denies the allegations set forth in Paragraph 20 of the Complaint.

21. Denies the allegations contained in Paragraph 21 of the Complaint.

AS AND FOR A SECOND CAUSE OF ACTION IN BEHALF OF PLAINTIFF ASHER EHRENFELD AGAINST DEFENDANT THE UNITED STATES OF AMERICA

22. The United States repeats and realleges its responses to the allegations contained in Paragraphs 1 through 21 of the Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint.

26. Denies the allegations contained at Paragraph 26 of the Complaint, except avers that the United States owns the VA Hospital located at 423 East 23rd Street, New York, New York 10010.

27. Denies the allegations contained at Paragraph 27 of the Complaint, except avers that the United States owns the VA Hospital located at 423 East 23rd Street, New York, New York 10010.

28. Denies the allegations contained in Paragraph 28 of the Complaint.

29. Denies the allegations contained in Paragraph 29 of the Complaint.

30. Denies the allegations contained in Paragraph 30 of the Complaint.

31. Denies the allegations contained in Paragraph 31 of the Complaint.

32. Denies the allegations contained in Paragraph 32 of the Complaint.

33. Denies the allegations contained in Paragraph 33 of the Complaint.

34. The allegations contained in Paragraph 34 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, the United States denies the allegations contained in Paragraph 34 of the Complaint.

35. Denies the allegations contained in Paragraph 35 of the Complaint.

36. Denies the allegations contained in Paragraph 36 of the Complaint.

**AS AND FOR A THIRD CAUSE OF ACTION IN BEHALF
OF PLAINTIFF ASHER EHRENFELD**

37. The United States repeats and realleges its responses to the allegations contained

in Paragraphs 1 through 36 of the Complaint.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint.

With respect to the WHEREFORE clause asserted in the Complaint, the United States denies that Plaintiff is entitled to any such relief.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's own negligence was the sole proximate cause of her alleged injuries and damages.

THIRD DEFENSE

The United States acted reasonably and without negligence at all times relevant to the events alleged in the Complaint.

FOURTH DEFENSE

In the event the United States is found to be negligent, which negligence the United States denies, the negligence of plaintiff contributed to plaintiff's injury and any recovery must be proportionately reduced.

FIFTH DEFENSE

Plaintiff has failed to mitigate her damages, if any, as required by law.

SIXTH DEFENSE

Plaintiff's recovery, if any, must be reduced pursuant to the collateral source statute, N.Y. Civil Practice law § 4545(c).

SEVENTH DEFENSE

Plaintiffs have failed to exhaust all administrative remedies.

EIGHTH DEFENSE

This Court lacks subject matter jurisdiction over some or all of Plaintiffs claims.

NINTH DEFENSE

To the extent Plaintiff was injured, such injury was caused by the City Defendant and not the United States.

WHEREFORE, the United States demands judgment dismissing the Complaint and granting such further relief as this Court deems just and proper, including costs and disbursements.

Dated: New York, New York
December 17, 2007

Respectfully submitted,

MICHAEL J. GARCIA
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Southern District of New York
Attorney for the United States



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